

**JOINT LEGISLATIVE SUNSET
REVIEW COMMITTEE FINDINGS AND
RECOMMENDATIONS**

**Review and Evaluation of the
Hearing Aid Dispensers Examining Committee**

**Report to the
Department of Consumer Affairs**

APRIL, 1998

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

Senator Leroy F. Greene
Chair

Senate Members

Richard Polanco
Maurice Johannessen

Assembly Members

Susan Davis (VC)
Elaine Alquist
Bill Campbell

Staff

Bill Gage
Consultant

Staff Assistance Provided By:

David Peters, Consultant
Senate Business and Professions Committee

Michael Abbott, Consultant
Senate Business and Professions Committee

Jay DeFuria, Consultant
Senate Business and Professions Committee

Sailaja Cherukuri, Consultant
Assembly Consumer Protection Committee

IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE HEARING AID DISPENSERS EXAMINING COMMITTEE (HADEC)

ISSUE #1. Should the licensing of hearing aid dispensers be continued?

Recommendation: *Both the Department and Committee staff recommended that the licensing and regulation of hearing aid dispensers by the State of California be continued.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: Consumers of hearing aid dispenser services are often extremely vulnerable; the majority are elderly, and may have limited financial resources, and may suffer from debilitating illnesses. Other consumers are children who need proper hearing aid fitting. Fitting clients has potential for physical harm. In particular, taking an impression of the ear canal to make the hearing aid is an invasive procedure, which, if improperly done, could cause severe pain, and increase hearing loss. Consumers can also suffer great financial harm. Technological advances have increased the effectiveness of hearing aids dramatically – and also have increased costs. Hearing device costs range from \$800 to \$3,400 (costs double if two hearing aids are required).

There are no federal mandates for states to license or otherwise regulate hearing aid dispensers. However, all states except Massachusetts regulate hearing aid dispensers. B&P Code § 3351 exempts from licensure those engaged in the practice for a governmental agency, private clinic, institution of higher education, or a public nonprofit organization. Licensed physicians and surgeons, audiologists, and individuals supervised by audiologists who do not directly or indirectly engage in the sale of hearing aids are also exempted from the licensing act (§ 3351.3).

There is a significant amount of regulatory overlap for hearing aid dispensers. Approximately 40% of the 1,457 licensed hearing aid dispensers are also licensed as audiologists by the Speech-Language Pathology and Audiology Board (there are 1,238 audiologists). Dispensers perform only those hearing tests required for the purpose of fitting and selling hearing aids, and are prohibited from conducting diagnostic testing.

ISSUE #2. Should HADEC continue its efforts to strengthen the education requirements for hearing aid dispenser licensing applicants, including encouraging the development of educational programs in the state's community colleges, which would provide applicants with the required knowledge and competency to become licensed dispensers?

Recommendation: *Both the Department and Committee staff recommended that HADEC make recommendations regarding increasing the educational requirements to become licensed as a hearing aid dispenser, with input from the professional associations representing hearing aid dispensers and audiologists, licensees, public representatives, and the Department of Consumer Affairs. It was also recommended that HADEC take steps to encourage the development of appropriate educational programs in the state's community colleges.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: Currently, a high school diploma or its equivalent is the only educational requirement to become a licensed hearing aid dispenser. That requirement was established as recently as 1994 (AB 1807, Chapter 26, Statutes of 1994). The licensing law authorizes HADEC to recommend the preparation of and administration of a course of instruction pertaining to fitting hearing aids, and require applicants for licensure to complete the course.

Numerous proposals for educational standards have been set forth by the various interested parties. In last year's AB 1245 (Martinez), the Hearing Healthcare Providers proposed to require a bachelor's degree, or, as an alternative, a degree from the American Conference of Audioprosthology. The California Academy of Audiology proposes requiring a graduate degree in audiology as the entry level educational standard by the year 2000. These proposals appear to raise the standard too high too quickly, and would likely adversely impact a number of economically disadvantaged individuals seeking entrance into a trade or profession.

In addition, HADEC has promulgated regulations requiring specified postsecondary course work. However, the proposed regulation was rejected by the Office of Administrative Law. The committee is currently putting forth a new regulatory proposal for education requirements.

ISSUE #3. Should HADEC transfer the continuing education function to a professional association which represents hearing aid dispensers?

Recommendation: *The Department did not address this issue. Committee staff recommended that the continuing education program provided by HADEC not be transferred to a private professional association.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The Hearing Healthcare Providers (HHP), a professional association of some 500 members who are hearing aid dispensers, audiologists and others, recommends that the continuing education (CE) function of HADEC be transferred to HHP "where it can receive the

time and resources necessary to ensure the highest quality continuing education programming possible.” HHP believes that HADEC, with its limited budget is not prepared to fully manage the CE function along with its other responsibilities.

Since there are no formal educational (other than a high school education) or training requirements for licensure, HADEC requires licensees to complete 9 hours (the requirement was 6 hours prior to 1997) of continuing education. Annually, upon renewal, licensees must, under penalty of perjury, attest to having completed the required CE. All CE is subject to monitoring and audit, but HADEC does not verify all CE. HADEC approves CE courses.

The HHP believes that with the recent increase in the CE requirement, the committee cannot adequately administer the CE program, and it would be appropriate for the professional association to administer the program. However, such a move appears to be self-serving for an association whose membership makes up approximately 30% of the licensees. The Joint Committee may wish to recommend not turning over this State regulatory function to a private association.

ISSUE #4. Should an electronic tracking system be implemented to obtain timely, accurate and complete licensing and enforcement data?

Recommendation: *The Department did not address this issue. Committee staff concurred with recommendation of the HADEC to implement an electronic tracking system, as long as the Committee complies with all mandated requirements to implement any new technology project.*

Vote: *The Joint Committee adopted the recommendation of HADEC and Committee staff by a vote of 6-0.*

Comment: HADEC’s application review process is not automated, due to the committee’s ongoing fiscal problems. Manually tracking and processing applications is a time-intensive personal review process. The Joint Committee has historically supported the application of technology when it will improve the efficiency and effectiveness of any board. However, HADEC must proceed with due regard to its budgetary constraints, and operate in keeping with the requirements of the Government Code and the State Administrative Manual to implement an electronic tracking system.

ISSUE #5. Should HADEC implement electronic testing for the written examination?

Recommendation: *The Department did not address this issue. Committee staff recommended that HADEC should, as budgetary constraints will allow, implement electronic testing for the written examination. It should coordinate its efforts with the Department of Consumer Affairs.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: Currently, the written examination is administered four times a year by the committee. In 1994 and 1995, the written exam was administered electronically through an examination contractor. The contract with the company administering the examination expired at the end of 1995. At that time, the Department was in the process of selecting a contractor who could administer electronic exams for multiple boards and committees. The Committee states, that when a contractor, or contractors, is selected, it will evaluate the feasibility of resuming electronic testing for the written portion of the exam.

ISSUE #6. Should the HADEC report to the Joint Committee on the large number of fraud complaints against licensees, and discuss possible causes and solutions?

Recommendation: *The Department did not address this issue. Committee staff recommended that the HADEC report to the Joint Committee by October 1, 1998, on the causes for the large number of complaints involving fraud and make recommendations for possible solutions.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: Over the past three years, 811 of the 962 complaints filed with the board against licensees were for fraud. The board should speak to the nature of that fraud and possible causes and solutions.

ISSUE #7. Should licensing fees be increased, as recommended by HADEC?

Recommendation: *Both the Department and Committee staff recommended against a fee increase at this time. Currently over 50 percent of HADEC's budget goes to enforcement. The fiscal profile of merger of HADEC and SPAB could provide some cost savings through elimination of duplicative functions. A fee increase proposal would be premature until after evaluation of the proposed merger of these two agencies.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The Committee has experienced ongoing fiscal problems in spite of two fee increases in the last seven years. Enforcement costs increased dramatically after the Committee assumed full responsibility of its enforcement program from the Medical Board of California (MBC) in 1994. HADEC attributes the increase to the investigation of old cases which had languished at the MBC. Now that most of the old cases are closed and cases are being investigated in a timely manner, the enforcement costs appear to be stabilizing. For the first time in years, the Committee did not exceed its enforcement budget this past fiscal year.

The Committee states that the recent containment of enforcement costs could indicate that the current fees might be able to support the Committee's programs. However, should the complexity or the number of cases increase, the Committee's budget could not accommodate the needs.

HADEC's budget for FY 97/98 is \$578,000, and projected revenues are \$525,169. The largest single budget category is enforcement, where HADEC is budgeted to spend 56.5% (\$326,444). Of the enforcement budget, the largest single components are the Division of Investigation – \$156,448 (for complaint investigations), and the Attorney General – \$70,599. Based upon current revenues and expenditures, the committee expects deficits of \$27,000 by the end of FY 99/00, and \$102,000 in FY 2000/01.

HADEC is confident that increased funding would allow continued proactive movement toward assuring the highest level of consumer protection. HADEC suggests either of the following fee increase options: (1) a temporary fee increase, or assessment, to cover enforcement debts; (2) a permanent increase across all fees, to maintain strong revenues. The Committee sought to address the fiscal situation legislatively by pursuing a fee increase this year. However, an author could not be found for their proposal which would have increased fees for a two-year period.

ISSUE #8. Should the Hearing Aid Dispenser Examining Committee be continued as an independent board, or should it be merged with another licensing board or should its functions and operations be assumed by the Department?

Recommendation: *As indicated earlier, both the Department and Committee staff recommended that the Joint Committee give strong consideration to merging the Hearing Aid Dispenser Examining Committee with the Speech-Language Pathology and Audiology Board.*

Vote: *The Joint Committee did not adopt the recommendation of the Department and Committee staff by a vote of 1-4.*

Comment: (See Discussion under Issue #14 pertaining to the Speech-Language Pathology and Audiology Board.)